

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.546 of 2015

Date of Decision: May 30, 2015

State of H.P.

....Petitioner.

Versus

Kailash Chand

....Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

For the petitioner : Mr. V.S. Chauhan, Additional
Advocate General.

For the Respondent : None

Sanjay Karol, Judge.

State has filed the present petition, under the provisions of Section 378(3) of the Code of Criminal Procedure, seeking leave to appeal against the judgment dated 14.1.2015, passed by Special Judge, Shimla, Himachal Pradesh, in Sessions Trial No.29-S/7 of 2011, titled as *State of H.P. v. Kailash Chand*, whereby accused-respondent Kailash Chand (hereinafter referred to as the accused), stands acquitted of the charge for having committed offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter after referred to as the Act).

2. In relation to FIR No.11, dated 1.3.2011 (Ex. PW-8/F), registered at Police Station, New Shimla, District Shimla, Himachal

Pradesh, under the provisions of Section 20 of the Act, accused Kailash Chand was charged to face trial, for having committed offences, punishable under the provisions of Section 20 of the Act.

3. Briefly stated, case of the prosecution is that on 1.3.2011, at about 1.30 p.m., when Inspector Kamal Chand (PW-12), Incharge SIU, Shimla, alongwith ASI Yoginder Singh (PW-9), HC Manoj Kumar, HC Yashwant Singh, Constable Anil Kumar (PW-4) and Constable Pawan Kumar (PW-5), was present on the road near Mist Chamber, Lower Khalini, New Shimla, he received secret information that accused Kailash Chand used to deal in sale of Charas from his house and a large quantity of the same could be recovered from there. Finding the said information to be authentic and reliable, the same was reduce into writing and sent to the Additional Superintendent of Police (Headquarters) through Constable Anil Kumar. He associated two independent witnesses Surender (PW-3) and Lalit Sharma (not examined) and at 2 p.m. raided the house of the accused, where accused was found present in a room on the second floor. Inspector Kamal Chand apprised the accused of the information and his intention to search the room. Police officials and the independent witnesses gave their search to the accused and thereafter house of the accused was searched. From a shelf of the room, a plastic box was found, which contained 220 grams of Charas which was put in the very same plastic box and

sealed with seal impression 'X', and NCB form (Ex.PX) was filled up in triplicate. On the basis of Ruka (Ex.PW-12/A), which was sent to the Police Station, FIR (Ex.PW-8/G) was registered against the accused. On completion of investigation, which, prima facie, revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

4. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present petition for leave to appeal by the State.

5. Mr. V.S. Chauhan, learned Additional Advocate General, has taken me through the record of trial Court, including testimonies of the prosecution witnesses.

6. In our considered view, prosecution has not been able to establish, as is so required in law, that 220 grams of Charas was recovered from exclusive and conscious possession of the accused. Perusal of the testimony of witnesses reveals that two views, with regard to the manner in which the search and seizure operations were conducted by the police, have emerged on record. Whereas, police officials present on the spot want the Court to believe that the search was carried out in the presence of independent witnesses, after complying with the statutory formalities, but however, from the testimony of independent witness Surinder Singh (PW-3), it is evident that the testimonies of the police officials stand contradicted.

According to the independent witness, no recovery was effected in his presence. We see no reason to disbelieve such version. No doubt, the witness was declared hostile, yet nothing fruitful could be elicited from his testimony. Nothing prevented the prosecution from examining another independent witness, even if he had been won over by the accused, pertaining to which fact there is nothing on record. According to Inspector Kamal Chand (PW-12), search and seizure operations were carried out on the basis of secret information, but however, on this count we find there is contradiction in the version so narrated by the police officials.

7. Hence, trial Court, in my considered view, rightly acquitted the accused. There is no error apparent on the face of record or illegality or perversity, resulting into miscarriage of justice, in the findings returned by the trial Court, warranting interference by this Court.

As such, present petition for leave to appeal, being without any merit, is dismissed and disposed of.

(Sanjay Karol),
Judge.

(P.S. Rana)
Judge

May 30, 2015^(sd)